

DETAILED ACTION

1. This is the final Office action based on the 10/585931 application filed on July 13, 2006.
2. Claims 1-8 are pending and have been fully considered.

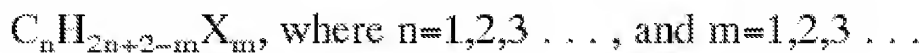
Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over GROF et al. (US 2004/0248307).

GROF et al. discloses a system and a method for controlling the amount of a marker added to an unmarked fluid, such that a selected marker concentration in the fluid is obtained. Suitable fluids include petroleum products such as crude oil, naphtha, gasoline, diesel fuel, kerosene, etc. Furthermore, a combination of a plurality of markers can be added to the unmarked fluid, each at a selected concentration (paragraph 0025). According to another example the marker can be a halogenic compound, such as an alkyl halide having the general formula:



"X" is a halogen such as fluorine (F), chlorine (Cl), bromine (Br), and iodine (I).
An example of such an alkyl halide is tetrabromoethane (paragraph 0031).

In independent method claim 1, applicant uses open-ended claim language “comprising” which allows for the addition of other additives such as those taught in the reference but not by applicant. Markers are added to fuels in very, very small amounts to mark or tag the specific fuel so if one of ordinary skill in the art tries to steal the fuel it can be identified. It is well known in the art markers are essentially invisible and are not detectable unless a specific test is made for them. Applicant’s invention differs in method claim 1 by using the alkyl halide as a fuel additive to a fuel *to increase completeness of combustion of the fuel* which is not taught by GROF. However, fuel markers are additives to fuels, and since it is not clear from the claims or from applicant’s specification how much of the alkyl halide is need to increase the completeness of combustion of the fuel, the examiner is of the position that the amount of alkyl halide added by GROF to mark the fuel is sufficient to increase the completeness of combustion of the fuel. Unless demonstrated otherwise, the examiner is of the position that the relative claim language to “increase” the completeness of combustion of the fuel does not patentably distinguish the claims over the prior art to GROF.

Response to Arguments

5. Applicant’s arguments filed June 18, 2009 have been fully considered but they are not persuasive.

a. Applicant argued GROF et al. does not disclose the claimed ranged of 3.16-10 ppm but instead GROF et al. teaches about 3 ppm marker of the concentration (paragraph 0047). As argued by applicant, GROF et al. discloses that the fluid marking

system is capable to produce a marker concentration of 3 ppm, with a deviation of 5%. Thus, various alterations of the fluid which contains the same marker at greater than 3.15 ppm or less than 2.85 ppm, can be detected at an assortment deviations, paragraph 0047. In paragraph 0095, GROF et al. discloses various examples of fluids containing tetrabromoethane at 3.1 ppm. The examiner is of the position that it would have been obvious to one of ordinary skill in the art to have added the marker disclosed in GROF to a fuel composition in a slightly higher amount including the claimed amount of 3.16 ppm. The examiner is of the position that the subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because the marker in the claims functions exactly the same as taught in the prior art. See *In re Malagari*, 182 U.S.P.Q. 549; *In re Wertheim* 191 USPQ 90 (CCPA 1976).

b. The examiner is of the position a reference is good not only for what it teaches but also for what one of ordinary skill might reasonably infer from the teachings. *In re Opprecht* 12 USPQ 2d 1235, 1236 (CAFC 1989); *In re Bode* USPQ 12; *In re Lamberti* 192 USPQ 278; *In re Bozek* 163 USPQ 545,549 (CCPA 1969); *In re Van Mater* 144 USPQ 421; *In re Jacoby* 135 USPQ 317; *In re LeGrice* 133 USPQ 365; *In re Preda* 159 USPQ 342 (CCPA 1968). In addition, "A reference can be used for all it's realistically teachings and is not limited to the disclosure in its preferred embodiments" See *In re Van Marter*, 144 USPQ 421.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATOSHA HINES whose telephone number is 571-270-5551. The examiner can normally be reached on Monday thru Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATOSHA HINES/
Examiner, Art Unit 1797

/Ellen M McAvoy/
Primary Examiner, Art Unit 1797